

**IN THE CIRCUIT COURT FOR DAVIDSON COUNTY, TENNESSEE
FOR THE TWENTIETH JUDICIAL DISTRICT AT NASHVILLE**

**STATE OF TENNESSEE, *ex rel.*, ROBERT
E. COOPER, JR., Attorney General &
Reporter,**

Plaintiff,

v.

**THE KROGER CO., an Ohio corporation,
on behalf of itself and its affiliates
and subsidiaries dba KROGER, RALPHS,
KING SOOPERS, CITY MARKET,
DILLONS, SMITH'S, FRY'S, QFC,
BAKER'S, PRICE RITE, OWEN'S, JAYC,
HILANDER, GERBES, PAY LESS,
FOOD4LESS, FOODS CO, FRED MEYER,
FRY'S MARKETPLACE, SMITH'S
MARKETPLACE, KROGER
MARKETPLACE, TURKEY HILL, KWIK
SHOP, LOAF 'N JUG, QUIK STOP, AND
TOM THUMB,**

Respondent.

No. 67C3080

AGREED FINAL ORDER

This cause came to be heard on the State of Tennessee's Petition and the parties' Assurance of Voluntary Compliance, and the Court is of the opinion that the Assurance of Voluntary Compliance attached hereto as Exhibit A should be approved. It is therefore

ORDERED, ADJUDGED, and DECREED that the Assurance of Voluntary Compliance

annexed hereto and incorporated herein by reference, and hereby made a part of this Agreed Final Order ("Order") be, and the same hereby is, approved, and it is further

ORDERED, ADJUDGED, and DECREED that Respondent shall comply with the terms thereof unless rescinded in writing by the parties or modified as provided therein and approved by this Court for good cause shown.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that

(A) Jurisdiction of this Court over the subject matter herein and over the person of the Respondent for the purposes of entering into and enforcing this Order and the Assurance is admitted. Jurisdiction is retained by this Court for the purpose of enabling the State to apply such further orders and directions as may be necessary or appropriate for the construction, modification or execution of this Order and Assurance, including enforcement of compliance therewith and assessment of penalties for violation(s) thereof. Pursuant to Tenn. Code Ann. § 47-18-107, venue as to all matters between the parties relating hereto or arising out of this Order and Assurance is solely in Davidson County, Tennessee.

(B) As required by the Assurance and this Order, Respondent shall pay the total sum of Three Hundred and Twenty-Five Thousand Dollars and 00/100 cents (\$325,000), of which at least Seven Thousand and Five Dollars (\$7,500.00), is expected to be distributed to the State of Tennessee. The payment to the State of Tennessee shall be used for the purposes set forth as follows:

- (1) The sum of Four Thousand and 00/100 Dollars (\$4,000.00) shall be paid to the Attorney General of the State of Tennessee for attorneys' fees and costs of investigation, prosecution and monitoring for compliance of this matter, which may be used for consumer protection purposes at the sole discretion of the Attorney General.
- (2) The sum of Three Thousand and Five Hundred Dollars (\$3,500.00) shall be paid to the State of Tennessee, Department of Agriculture for use to fund its test shopping of tobacco products to minors in the State of Tennessee. Said funds shall be used at the sole discretion of Director, Regulatory Services, Tennessee Department of Agriculture or his designee for the purpose of reducing sales of tobacco products to minors in the State of Tennessee.

If the entire monetary amount anticipated by the State of Tennessee is not received, any monies received shall first be attributed to attorneys' fees pursuant to paragraph(B)(1) and next to the payment to the Department of Agriculture pursuant to paragraph (B)(2). In the event, the State of Tennessee receives additional monies, those funds shall be attorneys' fees pursuant to paragraph (B)(1).

(C) Respondent hereby waive any and all rights which it may have to be heard in connection with judicial proceedings upon the Petition, Assurance and Order.

(D) This Order and the Assurance shall only be enforceable by the parties to this action.

(E) Pursuant to Tenn. Code Ann. § 47-18-109, nothing in this Assurance or Order shall be construed to affect any private right of action that a consumer may hold against the Respondent.

(F) Any subsequent failure to comply with the terms hereof is *prima facie* evidence of a violation of the Tennessee Consumer Protection Act. Further, any knowing violation of the terms of this Assurance shall be punishable by civil penalties of not more than One Thousand Dollars (\$1,000.00) for each violation, in addition to any other appropriate penalties and sanctions.

(G) Pursuant to Tenn. Code Ann. § 47-18-107(c), an Assurance of Voluntary Compliance shall not be considered an admission of prior violation of the Tennessee Consumer Protection Act.

(H) Nothing in this Assurance or Order shall be construed to waive any claims of Sovereign Immunity the State may have in any action or proceeding.

(I) The Tennessee Attorney General and Reporter serves only as the civil law enforcement authority under the Tennessee Consumer Protection Act of 1977. He possesses no criminal authority. Therefore, nothing in this Assurance or Order shall be construed to waive any criminal claims that may exist.

(J) All costs associated with the filing and distribution of this Order, Assurance and Petition and any other incidental costs or expenses incurred thereby shall be borne by Respondent. No costs shall be taxed against the State of Tennessee as provided by Tenn. Code Ann. § 47-18-116. Costs shall be taxed to Respondent.

IT IS SO ORDERED.



Judge

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I hereby certify that this is a true copy
of original instrument filed in my office
this 23rd day of Oct 2001
By RICHARD L. PROOKER Clerk
R. Thomas
Deputy Clerk

JOINTLY APPROVED AND
SUBMITTED FOR ENTRY:

FOR RESPONDENT:



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